

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Assessment and Collection of Regulatory Fees) MD Docket No. 05-59
for Fiscal Year 2005)
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To: The Commission

COMMENTS OF CINGULAR WIRELESS LLC

Cingular Wireless LLC (“Cingular”) submits the following comments in the Commission’s above-captioned proceeding regarding the assessment of regulatory fees for Fiscal Year 2005.¹ Cingular directly and indirectly owns and controls numerous Commercial Mobile Radio Service (“CMRS”) licensees. Through them, Cingular is a nationwide provider of wireless service. These comments focus on the Commission’s proposed assessments for CMRS operators.² Specifically, for the reasons discussed below, Cingular opposes the Commission’s proposal to assess CMRS providers “using information from the Numbering Resource Utilization Forecast (NRUF) form.”³ Assessments should instead be based on carriers’ actual

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, MD Docket No. 05-59, Notice of Proposed Rulemaking, FCC 05-35 (rel. Feb. 15, 2005) (“*NPRM*”).

² *NPRM* at ¶¶ 51-54.

³ *Id.* at 51.

subscriber counts, as revealed in their billing systems and reported in Securities and Exchange Commission (“SEC”) financial filings, which is the most accurate source for such data.

In the proceeding regarding the assessment of regulatory fees for Fiscal Year 2004, Cingular demonstrated that use of NRUF data does not accurately reflect a carriers’ subscriber units by providing the Commission with a detailed analysis illustrating the problems that arise when subscriber counts derived from the NRUF report (FCC form 502) are used to determine regulatory fees.⁴ In the interest of brevity, those previously filed analyses are incorporated herein by reference. For the reasons discussed below, Cingular urges the Commission to reject NRUF data as the basis for CMRS carriers’ Regulatory Fee assessments.

I. THE PROPOSED USE OF NRUF DATA BASED ON “ASSIGNED” NUMBER COUNTS WILL NOT ACCURATELY REFLECT SUBSCRIBER UNITS OR TELEPHONE NUMBERS IN USE BY THE REPORTING CARRIER

The *NPRM* proposes simply that the Commission will “derive the subscriber count from NRUF data based on ‘assigned’ number counts that have been adjusted for porting to net Type 0 ports....”⁵ In general, the “assigned” category is intended to capture “numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending.”⁶ For at least two reasons, however, NRUF data does not accurately reflect CMRS carriers’ subscriber counts.

⁴ See Comments of Cingular Wireless LLC, MD Docket No. 04-73, at 2-7 (filed Apr. 21, 2004); Petition of Cingular Wireless LLC for Reconsideration, MD Docket No. 04-73 (filed Aug. 6, 2004).

⁵ *NPRM* at ¶ 54.

⁶ 47 C.F.R. § 52.15(f)(1)(iii).

First, in the number portability and number pooling context, the Commission requires carriers to report numbers in the assigned category that are in use by the customers of *another* carrier; this requirement leads to inaccurate subscriber counts for both the receiving and donating carriers. The *NPRM* even recognizes this fact stating that “many wireless carriers receive their new numbers as thousand-number blocks and that, within each block, up to 100 numbers can be retained by the donating carrier.”⁷ And that, “[b]ecause retained numbers are reported on the NRUF form as ‘assigned’ to the holder of the thousand block, a concern was raised last year that this anomaly would result in a lower count for the donating carrier and a higher count for the recipient carrier.”⁸ What the *NPRM* does not do is propose a mechanism to easily rectify this, as the Commission is “unable to correct this anomaly at this time.”⁹ As a result, use of a carrier’s “assigned” numbers, as reported in its NRUF, as a proxy for its telephone numbers or units in service for regulatory fees purposes clearly would be inappropriate.¹⁰ Cingular respectfully submits that it is arbitrary, capricious and unreasonable for the Commission to adopt a regulatory fee assessment methodology the Commission recognizes as erroneous.

In addition, the classification of intermediate numbers further complicates the reconciliation of NRUF data to subscriber counts. As the North American Numbering Council (“NANC”) first pointed out to the Commission in 2002, the Commission’s rules regarding the classification of intermediate numbers are unclear, and the NANC has specifically requested that

⁷ *NPRM* at ¶ 54.

⁸ *Id.*

⁹ *Id.*

¹⁰ Although any single carrier’s “assigned” numbers would not be representative of its numbers or units in service, the *total* amount of “assigned” numbers reported by CMRS carriers, as a group, could be used by the Commission to determine industry units in service in calculating the CMRS per-unit fee.

the Commission initiate a rulemaking proceeding to clarify the definition.¹¹ The NANC's Issue Management Group ("IMG") on intermediate numbers identified at least eight different potential interpretations of the rules, as applied to the categorization of numbers in carriers' inventories.¹² As the IMG report shows, in some instances it is unclear whether particular numbers are to be reported as intermediate or assigned.¹³

The Commission has never initiated the requested rulemaking, nor has it taken any action to clarify the proper categorization of numbers as intermediate. As a result of this lack of clarity, different carriers' "assigned" number counts may differ from one another, and carriers' actual subscriber counts may differ from the information contained in their NRUFs, as a result of reasonable differences of opinion regarding the proper interpretation of the Commission's definition of intermediate numbers. For these reasons, too, it is unreasonable to use NRUF data as a proxy for subscriber counts for Regulatory Fee assessment purposes.

II. GIVING CARRIERS THE OPPORTUNITY TO REVISE THEIR SUBSCRIBER COUNTS IS OVERLY BURDENSOME

The *NPRM* offers to permit carriers to revise their subscriber count to "amend their initial assessment letter to correctly identify their subscriber count."¹⁴ This reconciliation process is

¹¹ See Letter from Robert Atkinson, Chairman, NANC, to William Maher, FCC, dated Jan. 29, 2003 (requesting "that the FCC institute a rule-making proceeding to revise and clarify certain provisions of the Commission's rules that affect the definitions of Intermediate Numbers" and attaching NANC IMG Review of Intermediate Numbers, dated Nov. 19, 2002 ("IMG Report")). In fact, Commission staff has had notice of these issues at least since the November 2002 NANC meeting, at which the IMG report was discussed. See *FCC Announces the Next Meeting of the North American Numbering Council*, Public Notice, 17 FCC Rcd 21670 (2002) (including a report from the Intermediate Number IMG on the agenda).

¹² IMG Report at 2-3.

¹³ *Id.*

¹⁴ *NPRM* at ¶ 52.

overly burdensome to carriers. The *NPRM* contemplates that carriers identify discrepancies on a telephone number-by-telephone number basis between their actual subscriber counts and the NRUF-derived counts contained in the Commission's initial assessment letters.¹⁵ To deviate from the Commission's NRUF-derived counts, carriers will have to perform the analysis on a number-by-number basis in order to resolve any discrepancies between the information in their initial assessment letters and their actual subscriber counts. This process will be (indeed, has been) incredibly burdensome to carriers. As of year end 2004, Cingular reported that it had more than 49.1 million cellular/PCS subscribers.¹⁶ To identify discrepancies on a number-by-number basis would be virtually an insurmountable task for Cingular to accomplish. In addition to the burden on carriers, the process is wasteful on Commission resources.

III. THE COMMISSION SHOULD ASSESS REGULATORY FEES BASED ON ACTUAL SUBSCRIBER COUNTS

Cingular submits that the Commission should require carriers to submit Regulatory Fee payments based on their actual subscriber counts. This information is readily verifiable because it is contained in financial information that public companies must submit to the SEC. The *NPRM* states that the Commission will mail two rounds of assessment letters to CMRS cellular and mobile service providers.¹⁷ The initial assessment will be based on NRUF data and the final assessment letter will be based on actual subscriber counts submitted by carriers where

¹⁵ *Id.* at ¶¶ 52, 54.

¹⁶ See News Release, Cingular Wireless, *Cingular Wireless Posts Strong Fourth-Quarter Growth: 1.8 Million Pro Forma Net Subscriber Additions, Improved Churn, Solid Progress in Key Integration Initiatives* (Jan. 24, 2005) available at http://www.prnewswire.com/cgi-bin/micro_stories.pl?ACCT=088644&TICK=CINGUL1&STORY=/www/story/01-24-2005/0002898297&EDATE=Jan+24,+2005.

¹⁷ *NPRM* at ¶ 51.

discrepancies have been found in the initial assessment.¹⁸ Significantly, the *NPRM* acknowledges the veracity of the SEC filings by allowing carriers to use such filings as a way to correct the discrepancies contained in an initial assessment.¹⁹ Rather than squander significant carrier and Commission resources by processing two rounds of assessment letters, the Commission should allow carriers to report their subscriber counts, as derived from their billing systems and reported in SEC filings, and submit their regulatory fees based thereupon.

CONCLUSION

As demonstrated herein, NRUF data do not accurately reflect any given CMRS carrier's assessment basis for regulatory fees. Accordingly, to ease the burden on both Commission staff and CMRS carriers, the Commission should allow CMRS carriers to pay their regulatory fees based on subscriber count data derived from the billing systems and reported in filings made to the SEC.

Respectfully submitted,

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¹⁸ *Id.* at ¶¶ 51-52.

¹⁹ *Id.* at ¶ 54.